

6112/98

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#### OUTCOME OF PROCEEDINGS

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of : Working Group on Conventional Arms Exports

on : 17 February 1998

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Prev. docs. 5645/98, 6046/98

**Subject : EU CODE OF CONDUCT ON ARMS SALES**

1. At its meeting on 17 February, the Working Group on Conventional Arms Exports examined the proposal for a "Code of Conduct on arms sales" circulated by the Presidency in doc 5645/98 PESC 29 COARM 1 COMER 6 ECO 21 UD 5 ATO 17.

The Working Group also had as a basis for discussion the Italian proposal, complementary to the Presidency proposal, contained in doc. 6046/98 PESC 129 COARM 2 COMER 23 ECO 37 UD 9 ATO 26.

2. The Presidency and the French delegation presented their jointly prepared "draft declaration by EU Member States".

All delegations generally welcomed, and some expressed strong support for the Anglo-French initiative and shared the objective of setting high common standards for arms exports. The Greek and Spanish delegations maintained a scrutiny reservation.

3. A number of comments were offered both on the nature and structure of the proposal and on specific paragraphs.

As to the nature and format of the draft text, whilst some delegations supported the Presidency approach consisting in a declaration of a non-legally binding character, other delegations, including the Commission representative, were in favour of a more ambitious approach which would imply the adoption of an "act" and would constitute a more solid base for a EU policy.

4. The representative of the Council Legal Service clarified that whatever the instrument chosen, the initiative would remain within the framework of the CFSP. Even in the text of a declaration, the EU Member States would act "within the EU Council" as Article J 2.1 of the TEU commands. He also indicated that a range of other instruments, having an increasing degree of binding character, were at the disposal of the Council, varying from a resolution or recommendation to a common position. He pointed out that even in the framework of a common position, elements of substance could remain, if so wished, of indicative nature, whereas procedure elements could be made legally binding without unwanted side-effects. The Working Group agreed that the precise nature of the text should be decided in the light of its final content.
5. As to the structure of the text, most delegations supported the proposal put forward by the Italian delegation to re-arrange the sequence of paragraphs in the following manner:
  - a preambular part would contain a reference to the main political elements, such as cooperation within the CFSP framework, principle of transparency, intentions for future harmonisation of export control procedures. As to the commitment to maintain a strong defence industry, whilst some delegations suggested its deletion, others were in favour of retaining it in the text although in a less prominent position; some delegations voiced concern about the reference to collective defence commitments;
  - the paragraph on "undercut" would be placed in a final, operative part;
  - in the same final part, new elements would be added drawing on the Italian proposals contained in doc. 6046/98 (annual reports prepared by each Member State and common assessment of the national reports in an annual EU meeting).

6. A number of delegations supported the strengthening of the paragraph on "undercut", suggesting that the Member State which decides to grant a licence, even after consultation with the other Member State which has denied a licence for the same transaction, should notify its decision to all Member States and not only to the Member State issuing the original denial.

The Italian delegation, explaining that in its country the opening of commercial negotiations for arms exports is subject to prior licence by export control authorities, requested that the text of paragraph D be amended in order to cover denial of such a licence.

7. Several delegations felt the need for a precise, common definition of the scope of the Code of Conduct. Some suggested that the military list agreed within the Wassenaar Arrangement and the Community dual-use regime list would provide the easiest terms of reference. One delegation considered that the military list for the Code of Conduct could be more ambitious than the Wassenaar Arrangement list.
8. The Working Group then proceeded to the examination of the specific paragraphs of the Code of Conduct. Comments focused mainly on the following points:
- para. 1 c): one delegation would prefer "the non-proliferation commitments within the framework of the Australia Group ...";
  - para. 1 d): some delegations suggested the deletion of "all forms of";
  - para. 2: two delegations suggested that this paragraph be drafted in a negative way, so as to result in a sort of presumption of denial of authorization for arms export to countries of concern from a human rights view point;
  - para. 2 b): the scope of this sub-paragraph seemed to several delegations to be excessively restricted by the requirement that the risk must be "clearly identifiable". They suggested that it should be drafted in similar terms as para. 4.a).
  - para. 2 b) ii): a number of delegations felt that this paragraph should be reworded and in particular the last passage should be deleted. The particular importance of this criterion was stressed.

- para. 2., last but one sub-paragraph: some delegations asked that it be reformulated;
  - para 3 a): the consistency of a reference to "self-defence" in the framework of an "internal situation" was questioned; the following wording was suggested "taking into account the legitimate requirement for defence of democratic institutions";
  - para. 3: the possibility that an arms export could contribute to provoking conflict should also, in the view of one delegation, be mentioned among the elements to be taken into account;
  - para. 4, first sub-paragraph: one delegation suggested inserting after "against another country" the following text "and in particular against a Member State of the European Union,";
  - para. 5 a): in the view of some delegations the economic effects should not be mentioned among the considerations to be taken into account by Member States in the framework of their "security". The deletion of sub-paragraph e) and the redrafting of sub-paragraph b) were suggested;
  - para. 5: some delegations voiced their concern about the reference to "allies";
  - para. 6: the addition of the mention of "organized crime" was suggested;
  - para. 7: some delegations requested that the requirement concerning end-use be strengthened;
  - para. 8: it was suggested that some official documents could be mentioned as source of information for the economic data listed in this paragraph: World Bank Report, OSCE Report, etc...;
9. It was agreed that an explicit provision would make clear that the Code of Conduct would not negatively affect more stringent national legislations.

10. The Presidency expressed its satisfaction at the constructive spirit of the discussion. It took on board the suggestion of restructuring the introductory part of the draft as well as a number of detailed suggestions; it recognized the need for further work, namely on transparency and on the "no undercutting" principle. The possibility of establishing a common list of items covered by the EU Code of Conduct could be further explored, although the Code could also be implemented on the basis of national lists.

The Spanish delegation cautioned against too profound a modification of the proposal. The Presidency indicated that the reformulation of its proposal would not imply a dramatic change of approach.

11. The Presidency invited delegations to forward by fax to the Presidency , with copy to the Secretariat and copy for information by Coreu, their comments on the draft EU Code of conduct before the end of February. Comments should also address the Italian proposals set out in doc. 6046/98 and any preliminary indications delegations may wish to express on the character of the Code.

The Presidency will establish a revised version of the draft Code of Conduct by early March. It will also consider, at that stage, the opportunity of convening, if need be, an extraordinary meeting of the Working Group on Conventional Arms Exports to discuss the new draft.

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